

1 Andrew S. Jacob (#22516)
2 ajacob@polsinelli.com
3 Jennifer Axel (#023883)
4 jaxel@polsinelli.com
5 **POLSINELLI P.C.**
6 CityScape
7 One East Washington St., Suite 1200
8 Phoenix, AZ 85004
9 Phone: (602) 650-2000
10 Fax: (602) 264-7033
11 *Attorneys for Plaintiffs*

Marty Harper (#003416)
mharper@polsinelli.com
MARTY HARPER, PLLC
One East Washington St., Suite 1200
Phoenix, AZ 85004
Phone: (602) 650-2000
Fax: (602) 264-7033
Attorneys for Plaintiffs

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF ARIZONA**

11 Don ADDINGTON; *et al.*,
12
13 *Plaintiffs,*
14 vs.
15 US AIRLINE PILOTS ASS’N, *et al.*,
16
17 *Defendants.*

CASE NO. 2:13-CV-00471-PGR

Notice of Post-Trial Events That Are Relevant to Remedy

18 Soon after the Justice Department antitrust lawsuit settled, the West Pilots chose
19 five class members to serve as the West Merger Committee, which will independently
20 represent the West Pilots in the MOU seniority integration process. [A. Jacob, *Decl.*, ¶ 1
21 (filed concurrently).]

22 In early December, the United States Bankruptcy Court for the Southern District of
23 New York set December 9, 2013, as the effective date of the plan of reorganization of
24 American Airlines, setting in motion the pilot seniority integration process that is
25 required by the *Memorandum of Understanding Regarding Contingent Labor Agreement*
26 (“MOU”). [See Doc. 291.] On December 10, 2013, New American (the airline resulting
27 from the merger of American Airlines and US Airways) sent an email to the attorneys
28 representing the American Airline pilots’ union (APA), the US Airways pilots’ union

1 (USAPA), and the West Pilot Class. [Jacob, *Decl.* at ¶ 2.] This email proposed to
2 convene a meeting in Washington, D.C., on December 20, 2013, to “initiate the
3 McCaskill-Bond process” with discussion of the Protocol Agreement, which according to
4 the MOU, must be negotiated by January 9, 2014. [*Id.* at ¶ 3.] The West Merger
5 Committee accepted the invitation that same day. [*Id.* at ¶ 4.] APA also timely accepted
6 the invitation. [*Id.* at ¶ 5.] A copy of the invitation and the West Merger Committee’s
7 response thereto is attached as Exhibit “A” to the declaration by undersigned counsel. [*Id.*
8 at ¶ 6.]¹

9 USAPA objected to including the West Merger Committee in any discussion of the
10 Protocol Agreement. [*Id.* at ¶ 7.] But it waited until late in the evening of December 19,
11 2013, to respond that it would not attend the December 20 meeting. [*Id.* at ¶ 8.] In that
12 response, USAPA asserted that a meeting that included New American and the West
13 Merger Committee would violate the RLA because it would be collective bargaining with
14 someone other than the certified bargaining representative. [*Id.* at ¶ 9.] USAPA also
15 indicated that its merger committee would negotiate seniority integration directly with
16 APA (without the participation of either New American or the West Merger Committee).
17 [*Id.* at ¶ 10.] A copy of USAPA’s December 19 response is attached as Exhibit “B” to the
18 declaration by undersigned counsel. [*Id.* at ¶ 11.]

19 All five members of the West Merger Committee and counsel flew to Washington
20 for the December 20 meeting, which was held as scheduled. [*Id.* at ¶ 12.] New American
21 and APA also attended. [*Id.* at ¶ 13.] USAPA did not attend. [*Id.* at ¶ 14.]

22 At the December 20 meeting, the West Merger Committee presented APA with a
23 draft Protocol Agreement that would have kept the seniority integration on the schedule
24 set out in the MOU. [*Id.* at ¶ 15.] A copy of this draft is attached as Exhibit “C” to the
25 declaration by undersigned counsel. [*Id.* at ¶ 16.] APA agreed to respond to this draft by
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27 ¹ For simplicity, the pre- and post-merger airline entities are collectively referred to
28 as “New American.”

1 January 6, 2014. [*Id.* at ¶ 17.] At no time during this meeting did the West Merger
2 Committee and New American enter into any negotiations concerning this draft Protocol
3 Agreement or any other matters related to conditions or terms of employment. [*Id.* at
4 ¶ 18.] In other words, the West Merger Committee and New American did not engage in
5 any collective bargaining during the December 20 meeting. [*Id.*] And they have not done
6 so at any time thereafter. [*Id.*]

7 Although USAPA’s Merger Committee did not attend the December 20 meeting, it
8 did come to Washington. It did so on December 19 to discuss the Protocol Agreement
9 with APA. [*Id.* at ¶ 19.] Indeed, in an update for its members published the following
10 day, USAPA characterized its meeting with APA as discussion of “language for the
11 Protocol Agreement which will govern major aspects of the upcoming SLI [Seniority List
12 Integration] process.” [*Id.* at ¶ 20.] USAPA also stated in that update that, unless directly
13 ordered to do otherwise by this Court, it will continue seniority integration discussions
14 with APA without the West Merger Committee. [*Id.* at ¶ 21.] A copy of this update is
15 attached as Exhibit “D” to the declaration by undersigned counsel. [*Id.* at ¶ 22.]

16 Section 7 of the MOU provides that New American would “reimburse the merger
17 representatives involved in the seniority integration” for “expenses” and “flight pay
18 loss.”² It explains that “[a]ll expenses for flight pay loss shall be paid directly by the
19 airlines[,] and USAPA and APA shall provide supporting information to support the
20 flight pay loss claim.” Finally, section 7 provides: “US Airways and New American
21 Airlines shall also make positive space transportation available to members of USAPA’s
22 Merger . . . Committee[], and similar APA committee members, when engaged in
23 activities related to seniority list integration. . . .” [Trial Exhibit 024.]

24 At the December 20 meeting, New American would not negotiate or otherwise
25 discuss with the West Merger Committee how its members could obtain expenses, flight
26

27 ² “Flight pay loss” refers to pay would have been earned if a pilot were not engaged
28 in work-related / union-related activities.

1 pay loss, and positive space transportation, as per Section 7 of the MOU. [Jacob, *Decl.* at
2 ¶ 23.] This was most likely because of threats that USAPA made in its December 19
3 letter to the company. [See Exhibit “D” to declaration by undersigned counsel.]
4 Consequently, unless this Court directly orders otherwise, or unless USAPA agrees that
5 New American must regard the West Merger Committee as a union committee or as the
6 functional equivalent of one, there is no present indication that New American will
7 provide such support to the West Merger Committee.³ USAPA, therefore, understands
8 that even if New American and APA agree to West Merger Committee participation in
9 the MOU seniority integration process, its opposition to such participation will
10 substantially impair the Committee’s ability to participate.

11 Without flight pay loss and positive space transportation privileges, the members of
12 the West Committee will incur substantial financial detriment when they engage in
13 activities related to seniority list integration. Moreover, putting expenses, pay and travel
14 to the side, the members of the committee will find it difficult if not impossible to attend
15 meetings unless they are released from flight assignments. It is well understood in the
16 industry that release from flying assignments is part of flight pay loss benefits. There is
17 no indication that this is forthcoming. Consequently, even if the West Pilots were able to
18 raise funds to compensate the members of the West Merger Committee for lost pay and
19 expenses, the committee members might not be released from flying assignments.

20 Not only has USAPA refused to discuss the Protocol Agreement with the West
21 Merger Committee but on December 24, 2013, it filed a grievance seeking to bar New
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23

24 ³ Denial (or even delay) of financial support and positive space transportation
25 privileges will impact the West Pilots far more than it will impact USAPA. That is
26 because USAPA has ample means to fund its merger committee’s expenses. USAPA
27 assesses just under 2% of wages as dues (or the equivalent agency fees) against all US
28 Airways pilots. And for more than a year, it has been assessing an additional 0.5% of
wages for a special fund to be used for seniority integration. [See R. Streble, *Deposition*,
11:13 to 11:20 (Sep. 19, 2013).] The West Pilots can only ask for voluntary contributions.

1 American from including the West Merger Committee in the MOU seniority integration
2 process. [*Id.* at ¶ 24.] This grievance seeks resolution of the following question:

3 Whether the Company violated relevant provisions of the MOU by
4 recognizing and meeting with persons other than the APA and USAPA
5 concerning the seniority integration process under paragraph 10 of the MOU,
6 specifically by inviting and meeting with representatives of the plaintiffs in
7 *Addington, et al. v. US Airline Pilots Association*, 13-cv- 00471 (ROS) (Dist.
8 Ariz. 2013)(“Addington II”);

9 [*Id.* at ¶ 25.] A copy of this grievance is attached as Exhibit “E” to the declaration by
10 undersigned counsel. [*Id.* at ¶ 26.] The filing of this grievance strongly suggests that
11 USAPA is seeking to have an arbitration (that excludes the West Pilots) decide the issues
12 raised in Claim Four (McCaskill-Bond) before this Court does so.

13 In sum, the MOU seniority integration process is not going smoothly because of
14 USAPA. Rather than accept the participation of the West Merger Committee in that
15 process while this Court is deciding Claim Four, USAPA rejects West participation and
16 refuses to attend any meeting that is also attended by the West Merger Committee.
17 Indeed, rather than await this Court’s ruling, USAPA filed a grievance seeking to bar
18 New American from having any meetings that include the West Merger Committee.

19 Dated this 2d day of January 2014.

20 **POLSINELLI, PC**

21 */s/ Andrew S. Jacob*

22 By _____

23 Andrew S. Jacob

24 Jennifer Axel

25 One East Washington St., Ste. 1200

26 Phoenix, AZ 85004

27 **MARTY HARPER, PLLC**

28 Marty Harper

Attorneys for West Pilots

CERTIFICATE OF SERVICE

I hereby certify that on this 2d day of January 2014, I electronically transmitted the foregoing document to the U.S. District Court Clerk's Office by using the ECF System for filing and transmittal.

/s/ Andrew S. Jacob

By _____

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